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In The

Supreme Court of the United States

October Term, 1971

No. 70–110

STATE OF WISCONSIN,

Appellant,

vs.

JONAS YODER, ADIN YUTZY, WALLACE MILLER,

Appellees.

BRIEF AMICUS CURIAE OF THE NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE UNITED STATES OF AMERICA

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Interest of the Amicus Curiae

The National Council of the Churches of Christ in the United States of America is a federation of thirty-three Protestant and Eastern Orthodox religious bodies in the United States with aggregate membership totalling approximately 43,000,000. It is governed by a General Board of 250 members chosen by the member denominations in proportion to their size and support. The General Board determines the policies of the organization through debate, amendment and adoption of carefully-prepared statements and resolutions brought to it by its subordinate program divisions.

This brief amicus curiae is an implementation of such policy. It does not attempt to deal with the entire range of issues or argument before the Court, but only with those aspects on which the amicus can make a pertinent contribution derived from its particular character, outlook and experience. The following material goes mainly to the unique place of the Amish communities in the Christian tradition and in the nation, the danger posed to their survival as a living community by compulsory secondary education in public schools, and the importance of protecting their free exercise of religion — not only for their sake but for the common good.

In 1961, the General Board of the National Council of Churches was considering a policy statement entitled PUBLIC FUNDS FOR PUBLIC SCHOOLS when an amendment was offered by the Rev. Dr. Eugene Carson Blake, then chief executive officer of the United Presbyterian Church in

the United States of America and now Secretary General of the World Council of Churches. The Blake amendment was incorporated in the policy statement as ultimately adopted, and forms the policy basis for this brief. In pertinent part, the General Board, by adopting Dr. Blake's language, affirmed

> the right of all parents, all citizens, and all churches to establish and maintain non-public schools whose ethos and curriculum differ from that of the community as a whole. (The Constitution of the United States as presently interpreted guarantees this right.)
>
> In principle Protestant and Orthodox Churches claim the right for themselves to establish and maintain schools in any community where the ethos of the public school system is or becomes basically inimical to the Christian education of our children.

This statement was designed as a corrective to a policy statement supporting federal aid to education in public schools, reminding the churches of an earlier and deeper commitment to education for righteousness, against which any system of schools must be evaluated. The emphasis is not so much on setting up alternative private schools as it is on developing and carrying on whatever forms of education are necessary to safeguard the Christian upbringing of children.

It is the essential thrust of the Blake amendment that responsible religious groups in this country have the right to undertake, not just an imitation of conventional education, but a funda-

mentally different type of education from that generally prevailing in a given state or locality — one whose whole "ethos and curriculum differ from that of the community as a whole" — if necessary to embody and inculcate their understanding of what the divine Will requires.

Certainly this is not an unlimited right, but the religious bodies of which the statement speaks are not going to institute educational enterprises that are quixotic, eccentric, or doctrinaire or that pose hazards to their adherents or others. Many of them were engaged in general education centuries before there was a State of Wisconsin, and are fully as capable of choosing among arguable theories of pedagogy as are civil entities which have entered the field of education more recently.

The Old Order Amish, like most branches of the Mennonite tradition, are not constituents of the National Council of Churches. But the entire Christian movement would be poorer if the Amish were forced to conform to the environing society, and that society itself would be poorer if the Amish were compelled to emigrate, as they have often done in preference to conforming.

Therefore, the National Council of Churches in this brief seeks to express its interest, not only in the maximizing of religious liberty, but in the preservation of the Amish as a living embodiment of an ancient alternative understanding of the good life.

Argument

I.

THE AMISH ARE THE MOST CHARACTERISTIC SURVIVING ELEMENT OF A UNIQUE AND IMPORTANT BRANCH OF CHRISTIANITY, WHICH HAS MADE SIGNIFICANT CONTRIBUTIONS, NOT ONLY TO RELIGION, BUT TO WESTERN CIVILIZATION AS A WHOLE, AND WILL CONTINUE TO DO SO IF NOT FORCED TO ABANDON ITS TRADITIONS.

A. The Place of the Amish in Christianity.

The three respondents in this case are adherents of the Mennonite-Amish tradition, which derives from the Anabaptist movement of the early sixteenth century. Christianity has diverged into the following main branches, each making its distinctive contribution to the understanding and expression of the Christian faith:

1. Eastern Orthodox

2. Roman Catholic

3. Lutheran

4. Reformed (Calvinist, Presbyterian, etc.)

5. ANABAPTIST

6. English Reformation

   a. Anglican
   b. Wesleyan
   c. Baptist
   d. Quaker, etc.

The Anabaptist movement has been called "the left wing of the Reformation"[1] to distinguish it from the churches founded by Luther and Calvin, which became territorial or state churches. Though chaotic in its early years, the "left wing of the Reformation" produced several stable strands:[2]

1. Swiss Brethren

2. South German Brethren

3. Dutch Mennonites

4. Hutterites

The first two were largely dispersed by persecution, though some of their descendants have regathered in the United States to form various churches of the "Brethren."

The third group followed Menno Simons in the Netherlands beginning about 1536. A century and a half later, among the remnants of the Swiss Brethren, Jakob Ammann led a return to stricter Anabaptist faith and practice. His followers are the Amish, dating back to 1693. There has been much mingling and interchange among these closely-related strands, and today in the United States the term "Mennonite" usually is applied to the broader group, with "Amish" being the name used for a smaller, more conservative element within

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1. Bainton, Roland H., Studies on the Reformation, Boston: Beacon Press, 1963, pp. 119ff.

2. Littell, Franklin H., The Origins of Sectarian Protestantism, New York, Macmillan, 1964, p. 45.

or alongside it. At the center of the Amish group are the Old Order Amish, the most rigidly traditionalist of all.

The Anabaptist ideals later inspired other movements, such as the English Baptists and Congregationalists (among which were the Pilgrims who fled assimilation in Holland and landed at Plymouth Rock). But the purest and most uncompromising adherence to the original ideals of the Anabaptist movement are to be found among the Old Order Amish (and among the Hutterites, who are also resisting assimilation in the Dakotas, Montana and Canada).

John Hostetler, in a study of Amish-Mennonite groups in Mifflin County, Pennsylvania, discerns nine groups of varying strictness in one valley, which he diagrams in a series of concentric circles, with the most traditionalist group at the center, in the following progression: (1) Old School (Yoder), (2) Old School (Zook), (3) Byler Amish, (4) Peachy Amish, (5) Zook Amish, (6) Conservative Mennonite, (7) Allensville Mennonite, (8) Belleville Mennonite, (9) Protestant.[3] There is a constant outward flow from the stricter groups (which have a higher birth-rate) to the less strict, as individuals, families and congregations who find the Old Order too confining can move out to less rigorous Amish or Mennonite groups, where they often have relatives, since there has been much intermarrying among them in the many generations since they began to arrive in this country in the 18th century.

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3. Hostetler, John A., Amish Society, Baltimore: John Hopkins Press, 1963, pp. 237 ff.

The less-strict groups have relaxed the original ideals of the Anabaptist movement in various adjustments to "the world," but they can afford this luxury as long as the Old Order persists at the center of the fountain to keep the faith pure, and refreshes with its example and its emigrants the more assimilated groups which surround it like a series of settling basins. Thus the Old Order is the source and standard which keeps the whole Amish-Mennonite movement in touch with its Anabaptist origins.

B. Anabaptist Contributions.

The Anabaptists sought, not to reform the Christian Church of their day, but to restore the original Church of the New Testament (as they understood it). To do this, they joined together in little bands of believers determined to risk everything, including their lives, to practice the radical teaching of the Gospel. They began by baptizing one another into the new way, which earned them the epithet "re-baptizers" (Ana-baptists). Baptizing adults who had already been baptized as infants in the established Church was an offense punishable by death, but this act symbolized for the Anabaptists the mature, voluntary, and knowledgeable choice required for joining the faithful congregation.

They rejected the validity of force as a determinant in religion, insisting that the magistrate (the State) has no authority in matters of faith. They would obey the magistrate in anything which did not violate their religious duty, but would not themselves serve as magistrate or his minions

(soldiers) in the coercing of others. They would not resist either lawless evil or the "lawful" yet coercive power of the state. They rejected both violent revolution and violent persecution, but their only answer to either was migration or martyrdom.

Anabaptists eschewed for themselves all pomp, power, wealth, prestige, ostentation and sophistication. They sought instead an humble and unpretentious way of life, if possible close to the land. They undertook to care for one another in life's vicissitudes, so that no member of the congregation should suffer want. Each congregation formed a self-governing band which sought to keep itself "unspotted from the world." Their sole authority was the Holy Scripture, as interpreted and applied by each congregation, in which every member had a full and equal voice. In order to be able to take his part in the deliberations of the congregation, each member had to know how to read the Scripture. Thus the Anabaptist movement was one of the first organizations to require a standard level of literacy among all its members, and to institute methods of instruction to achieve it.

When new problems arose, the congregation discussed them in the light of Scripture and tradition until a consensus was reached — a form of "participatory democracy" developed at a time when there was no democracy whatever in Church or State. After a consensus had been reached, no one was entitled to depart from it without suffering the "ban" (Meidung) — ostracism from the congregation. These practices are still observed among the Amish.

Thus the Anabaptists initiated or first gave practical effect to several important elements in Western civilization:

1. Rejection of civil coercion in religious matters;

2. Separation of church and state;

3. Common universal education;

4. Self-government by mutual persuasion within a community of equals.

They have also embodied, and continue to embody in the Amish-Mennonite tradition, several ideals that Western civilization has not yet accepted but some day may — if the model is not lost:

5. Non-violence, "defencelessness";

6. "Plain living";

7. Mutual aid;

8. "Living loose from the world."

These contributions were not made without cost. The Anabaptists' insistence upon living differently from their neighbors led to trouble — and it still does. In several Swiss cantons, the property of Anabaptists was confiscated, hundreds of special police were appointed to track them down or hound them out of the territory. Many were executed — often without trial or hearing — for the crime of "re-baptizing," or on any plaus-

ible pretext. Others were thrown into prison, exiled, burned or hung. They were harried from town to town, hiding with families who risked their own safety to shelter them, persecuted by Roman Catholic and Reformed authorities alike. Yet, through all this persecution, they persisted in their chosen and distinctive way of life until it affected the rest of society, as previously indicated.

Over the years, they have fled from one refuge to another, from Switzerland to Alsace, to Würtemberg, France, Luxembourg, Germany. One group went to Austria and thence to Russia and finally to the United States in search of a place where they could obey God without interference. Now some have left this country for Canada or Paraguay because they feel they have not found their long-sought haven here. It is not Paraguay which has a Bill of Rights guaranteeing free exercise of religion, but the United States. And the United States will be poorer if the Amish must leave it to escape forced assimilation.

II.

THE AMISH DO NOT OPPOSE EDUCATION NOR FAVOR IGNORANCE; THEY REQUIRE THAT EVERY MEMBER OF THE CONGREGATION BE EDUCATED: BUT IT IS A DIFFERENT MODE OF EDUCATION FOR A KIND OF LIFE DIFFERENT FROM THAT FOR WHICH CONVENTIONAL SCHOOLING IS REQUIRED BY THE STATE OF WISCONSIN.

A. The Amish Commitment to Education.

The brief for petitioner seriously misrepresents the situation when it implies that the Amish are the source of a "disease of ignorance" from which the State must protect the child.[4]

> In failing to provide for secondary education for their children, the Amish are neglecting a parental duty and obligation to their children and neglecting their duties as citizens of a democracy from which they have reaped ample benefit.[5]

It is ironic that the State of Wisconsin undertakes to define the duty of the Amish in regard to education when the Amish since 1693, and the Mennonites since 1536, have been painstakingly educating every child in their gathered community. This they did long before the secular state made any effort to educate everyone and centuries before there was a State of Wisconsin. But

4. Brief for Petitioner, p. 9.

5. Ibid, pp. 20-21

Amish education is devoted to preparation for a way of life different from that which dominates twentieth-century American life.

> True education, for those of the Anabaptist-Mennonite line . . . is devoted to the cultivation of simple living, humility (Demut), long-sufferingness (Gelassenheit). Their system of elementary education, which was developed very early, was aimed at producing young adults capable of participating wholeheartedly in the life of the Christian community. Across the generations they have centered school curriculum in reading, writing, arithmetic, and the Bible — the subjects in which a full and participating member of the community needs proficiency.[6]

Because their mode of education requires basic ability to read, write and do simple arithmetic, the Amish utilize the public schools for the elementary levels of education. It is only at the level of secondary education that many Amish groups feel they cannot send their children to public schools.

B. Why the Amish Object to Public Secondary Education.

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6. Littell, Franklin H., "Sectarian Protestantism and the Pursuit of Wisdom," p. 65, in Public Control for Non-Public Education, Donald A. Erickson, ed. (Chicago: University of Chicago Press, 1969), citing "Education, Mennonite" and "Education Among the Mennonites in Russia," in Mennonite Encyclopedia (Scottdale, Pa.: Mennonite Publishing House, 1956) 2:150-57.

The objection of the stricter[7] Amish groups to public secondary education has three elements, according to a study based on interviews in Amish homes conducted by a staff member of the National Council of Churches:

1. The amount of education required . . . The Amish believe all children should be educated for what they consider the good life — farming or farm-related occupations, with a minimum of modern science or technology. The number of years of school is not as important to them as the content of education. Since formal education tends toward acculturation, they seek to minimize the time their children are exposed to this hazard.

2. The place where education is required. . . . The center of their anxiety is really the consolidated high school in the "wicked city." To avoid this peril, they . . . resist transportation of their children by bus into town, even in the lower grades and even when promised homogeneous Amish classes in town. It is the town itself which infects the child with worldly influences far from the protective aura of the family and faith group.

7. The point is sometimes made that some Amish groups do not object to public high-schooling for their children, as though that invalidated the objections of others. Each Amish congregation determines such decisions for its members, and it is usually the more conservative congregations, trying to preserve the "purer" form of their faith and practice, which reject public secondary education and the more assimilated Amish groups which accept it, thus augmenting their assimilation.

3. The degree of training of the teacher . . . The Amish would be able to educate their children entirely in their own private schools with teachers of their own faith if it were not for (the State's certification) requirement, since members are not supposed to have more than eight years of education themselves.[8]

C. The Amish Pursuit of Wisdom.

The reasons behind these objections can be found in an understanding of the distinctive nature of Amish life and of the education that prepares for it and is integral to it. Franklin H. Littell, a distinguished church historian who did his doctoral research on the Anabaptist movement and who wrote several articles on the Amish controversy in Iowa in 1966 while he was president of Iowa Wesleyan College, differentiates between two traditions in education.

Since the Middle Ages, he writes, "educators . . . distinguished education devoted to wisdom (Logos) from training in skills (Techne) . . . Wisdom . . . relates to continuity and wholeness and ultimate coherence,"[9] whereas technical training and its partner, scientific research, separate one specialization from another, the observer from his data, and the scholar's personality from his subject matter.

8. Kelley, Dean M., "Is There Room for the Amish?" in Town and Country Church, May-June, 1966, pp. 7 ff., a publication of the National Council of Churches, New York, N.Y.

9. Littell, "Pursuit of Wisdom" in Erickson, op. cit., pp. 69-70.

The Amish, Littell points out, follow the method of training in wisdom — how the good life is to be attained — and are distrustful of the critical-analytical-impersonal approach of scientific-technological education, since it tends to shatter the wholeness of the Amish "pursuit of wisdom." For this reason they reject the public high school, where scientific-technological education begins to become prominent, not because they fear modern knowledge or cherish ignorance, but because they are devoted to a different tradition, where technical proficiency is not divorced from moral and spiritual excellence.

D. The Amish Follow the "Oral Tradition."

Furthermore, Littell maintains, the Amish are followers of the pre-literary "oral tradition," which long antedated the development of printing and even of writing. To its skills of memorization and rhythmic rote-recitation we owe the initial transmission of the oldest holy writings of the major faiths. It is a way of assimilating and transmitting human lore that has its distinctive strengths (and weaknesses).

> The re-enactment of Biblical events and happenings in their own history, and the personal appropriation of group memory and group wisdom, make up the bread of the mind's life. Such a situation is "pre-scientific," but it is not anti-intellectual . . . There is no distinct boundary between (teaching) and the teacher's way of life as a whole. In training teachers for their schools, the Amish, like Jews and Christians of the

> early period, have preferred an apprentice system — very well developed — for formal instruction in "teaching methods" . . .
>
> From the lips of a credible witness, and by the example of his life, the ultimate meanings could be learned. . . .[10]

It is because of this tradition that the Amish are more concerned about the character of the teacher than about the content of the curriculum. If the teacher is a good man or woman, the product of years of "apprenticeship" in the Amish understanding of life, he or she can be trusted to transmit — and, more important, to embody — what it is really needful for Amish children to know. The non-Amish teacher has not undergone this essential training and so — whatever his or her academic attainments — cannot be relied upon to deliver genuine "education" as the Amish understand it.

E. The Amish Community Educates.

Lastly, Amish education is not dependent upon the relatively artificial, abstract and sequestered methods of public schooling. It is not confined to four walls or to a few hours of the day. It goes on all day long, wherever the child is in the close-knit Amish community. As Donald E. Erickson, Assistant Professor of Education at the University of Chicago, has noted in commenting on an Ohio case:

> In the Hershberger case (103 Ohio App. 188,

10. Littell, "Pursuit of Wisdom," p. 75.

> 1955), what happened within the four walls of a public schoolhouse was compared merely with what happened within the four walls of an Amish schoolhouse, and the fact that Amish children are educated largely outside school walls was deemed irrelevant. The Amish community assigns but limited functions to formal instruction, requiring the school merely to teach the three R's. Yet away from the schoolhouse, each child undertakes a graduate series of tasks under parental tutelage. Kitchens, stables, markets, and fields — not classrooms — are the principal education facilities. Many public educators would be elated if their programs were as successful in preparing students for productive community life as the Amish system seems to be . . . As tax-supported education struggles with the drop-out and potential drop-out, it is introducing sizeable components outside school walls . . .[11]

To be sure, most learning for most people takes place outside the classroom. It is because the environmental source may be inadequate for some that classrooms were developed and are now, rather superfluously, required by law for all. Where the natural environmental education is adequate for all purposes which the state should be entitled to require, it is supererogatory to require that it be supplemented by classroom study.

Because the Amish community as an integral

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11. "How to Exterminate the Amish Without Really Trying," in Erickson, op. cit.

whole is the assiduous educator of the Amish children, from childhood through adulthood, it is understandable that the Amish should object to the extraction of their children from that nurturing medium and their transportation to the artificial enclosures of public-school classrooms. To them, the secondary schooling required by the State is not only time lost from genuine education, but it is, by its very nature and in the respects recited, positively pernicious.

The State of Wisconsin, throughout its brief, continually assumes that education takes place only in "schools.".

> Viewing then, popular education in the school as vital to the perpetuation of society, one can accept the extension of the common school idea to the point where it embraces compulsory education for all children in some school whether it would be public or private.*

It would be risky in respect to most persons and groups for the State to assume that they will acquire an education without certain required schooling. But in certain exceptional instances, such as that of the Amish, the State should be prepared to follow the folk-adage, "Don't let schoolwork interfere with your education."

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12. Respondent's brief, p. 14, emphasis added.

III.

ENFORCEMENT OF THE STATE'S STANDARDS OF EDUCATION REPRESENTS A GENUINE THREAT TO THE CONTINUATION OF THE AMISH RELIGION, WHEREAS THE AMISH RELIGION DOES NOT REPRESENT A THREAT TO ANY COMPELLING INTEREST OF THE STATE.

A. The Threat to the Amish.

The decision in the Court below recognizes the severe conflict between the requirements of the State and the religious duties of the Amish.

> The law commands the appellants to perform affirmative acts which are repugnant to their religion. To the Amish, secondary schools not only teach an unacceptable value system but they also seek to integrate ethnic groups into a homogenized society, resulting in a psychological alienation of Amish children from their parents and great harm to the child . . . The impact on the Amish of compulsory education laws is so severe that in other states where they were required to send their children to public schools, they sold their farms and sought religious freedom elsewhere . . . When the Amish can no longer move, the impact may result in the extermination of their religious community.[13]

13. Decision of Wisconsin Supreme Court, January 8, 1971, as reproduced in Appendix to Petition for Writ of Certiorari, p. 106.

It is hard enough to maintain a non-conforming religious community against the diffuse contrary influences of secular culture without the State compelling acculturation by law. As indicated above, even the limited requirements of the State of Wisconsin would have the unavoidable effect of making the Amish community something other that it is and wants to be. The required certification of teachers, even in parochial schools, means that those teachers must be products of the very literary-scientific-technological culture the Amish consider demonic. Since no Amish teachers could remain true to the faith of the strict congregations and at the same time qualify for State certification — as State law requires — the consequence is that the Amish cannot permit their children to attend even parochial secondary schools without subjecting them to "alien" teachers and thereby jeopardizing their attachment to the Amish way of life and their eternal salvation.

A fortiori, the Amish cannot consent to their children's attendance at public high schools in the "wicked city," or even the presumably less wicked small town, without even greater risks: not only of "alien" teachers but a totally "alien" environment predicated upon and permeated throughout with precisely the "worldly" values against which the entire Amish tradition and teaching is a protest and reproach. They cannot risk this exposure of their adolescent children without risking their conversion to the alien world, or at the least their partial acculturation, which means the attenuation and attrition of Amish identity.

Just as a person resists as much as death itself the involuntary alteration of his identity and unique personality through "brainwashing" or lobotomy, so a religious community understandably resists its alteration by outside forces and considers the loss of its identity tantamount to "death." "Freedom of religion" should mean that religious communities which do not pose the threat of harm to others should not be obliged by law to risk the loss or change of their identity unless some compelling interest of the State is at stake.

B. The State's Interest.

The brief of petitioner, the State of Wisconsin, presents a glowing tribute to the importance of education as a compelling interest of state and nation. The history of the Amish suggests that they might well agree — provided the definition of "education" is broad enough, and it is not confused with mere schooling. What is less clear is that the legitimate and arguably "compelling interest" of the State justifies the State in compelling all children to attend the same kind of school.

Actually, the competition for jobs in a technologically-advanced society has virtually eliminated the need for compulsory education laws, since those students who do not obtain a maximum of education will fall behind in the race for jobs and advancement — a race in which the Amish refuse to enter. There may be a few children who would not be in school except for the law, and perhaps they justify the invoking of the police

power in respect to education. At any rate, the constitutionality of the compulsory education law as applied to others is not at issue in this case, only its application to the Amish.

In the case of the Amish, it is contended, the plea of free exercise of religion should protect them from all but the most compelling interest on the part of the State, which interest the court below ruled the State had failed to substantiate. The dialectic begun with the classic case of Pierce v. Society of Sisters continues. In that case, the State of Oregon attempted to compel all children to attend public schools, but this court ruled that non-public schools had a right to exist. Now the State of Wisconsin insists that all schools must be like public schools in their basic curriculum, duration, teachers' qualifications and architecture. Is this not simply another level of the question answered by this court in Pierce?

Among the most cherished assurances voiced by this court is the one that seems directed to the central issue in this case:

> The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations. (Pierce v. Society of Sisters, 268 U.S. 510)

Is not the attempt by the State to standardize its schools tantamount in effect to an effort to "standardize its children by forcing them to accept instruction from public teachers only" or from teachers indistinguishable from public teachers?

The court noted that standards for schools were not at issue in that case:

> No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise, and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare. (Ibid.)

Now this court is faced with the further form of the question of what constitutes the impermissible "standardization" of the people's (not the State's) children.

The State certainly has a duty and a responsibility — a compelling interest — to prevent any schooling, or lack of it, which clearly endangers the health or safety of children, or of anyone else. Likewise, it need not, should not, tolerate any mode of education or non-education which produces criminals or those who will become dependent upon society for their livelihood. But, as shown by the record, the Amish mode of education has made a far better showing than the public schools in

this respect: it has produced no felons and no public-welfare cases. No allegation has been made, let alone substantiated, that Amish education jeopardizes the health or safety of Amish children.

The only claim the State makes in respect to the children is that it must protect their "substantive right to an education."[14] The State expressed solicitude for the Amish children who are kept in economic subjection by their lack of education:

> Regardless of his ability or desires, the young adult Amish has only two alternatives: to join the Amish church . . . between sixteen and twenty, or to make his way in the other world with only an eighth grade education.[15]

As indicated in Hostetler's definitive Amish Society, this is not the condition of hopeless captivity that the State implies. Not only is there a constant outflow from the stricter Amish communities to the less-strict, but there are also a few precipitate breaks, especially among young men:

> Defecting Amish young men, though very few, tend to make abrupt changes like joining the army.[16]

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14. Petitioner's Brief, pp. 18 ff.

15. Ibid.

16. Hostetler, op. cit., p. 243; Ibid. p. 242

Thus it can scarcely be contended that Amish members cannot escape the community if they choose. Indeed, Hostetler himself did so, becoming a learned professor, yet without losing an affinity for his heritage.

This hypothetic hazard is nowhere substantiated in the evidence by testimony from anyone unable to leave the Amish community, or miserable in the outer world (beyond the common lot of men), because of educational deficiencies. And if there were evidence of such bondage, what would be the appropriate remedy for the State to apply?

> We might need to provide a Halfway House for Escaped Amishmen, but not a Compulsory Acculturation School for all Amish Children.[17]

As for a "substantive right of a child to an education" asserted by the State, to be enforced by the police power in violation of the wishes of the child's own parents, what could be a clearer case of a coercive "standardization" of children at the expense of the most central convictions of the parents? Littell, because of his experience in the Office of the High Commissioner for Germany following World War II, compares this State standardization of children with the Nazi regimentation of education in Germany, and calls the effort by public educators in the United States to impose the same kind of education on everyone "pretotalitarian."[18]

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17. Kelley, op. cit., p. 9

18. Littell, op, cit., pp. 80-82.

C. The Amish Are an Exception.

The anxiety that if an exception is made for the Amish, the whole system of public education will break down is illusory. The Amish are an exception. The compulsory education law need not apply to them nor to any other religious community which for generations has produced no juvenile delinquents, felons, or public dependents, and which takes care of its own members, educating them effectively to assume the roles which they will follow in adult life.

Certainly it will do little actual harm to anyone to accommodate the public order to the necessities of religious duty. On the contrary, it would conduce to a positive good by preserving one of the most distinctive and significant forms of human organization in history. As a staff member of the National Council of Churches who studied the Amish wrote:

> The Amish are not trying to undermine or convert the rest of society. They are not competing for some position of privilege or affluence that demands equality of opportunity with others. All they ask is to be left alone to follow their peculiar obedience, which is difficult enough without the interference of the outside world, let alone the interdiction of its law.
>
> These self-sustaining, non-conforming communities are precious to our whole society. Not only are they a collective expression of the individual exercise of conscience, but they are a living reminder

of the richness and diversity open to man — a reminder that human life can be organized around other values and at other tempos that those prevailing in our harried and neurotic urban mass society. We could not pay men and women to live out these arduous alternative patterns of existence. If these fragile colonies of dissent must be crushed by the heedless onrush of the modern age, the loss to our culture will be tragic, and every citizen who cherishes the liberty to follow conscience will be poorer.[19]

Conclusion

For the reasons stated, the decision of the Supreme Court of Wisconsin should be affirmed.

Respectfully submitted,

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19. Kelley, loc. cit.